

AF/ 3711

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	Examiner Name	M. Graham	
	Group Art Unit	3711	
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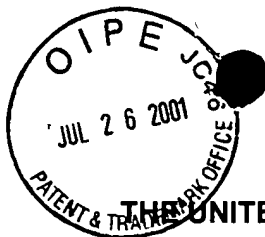
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BEFORE THE BOARD OF APPEALS

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8/16/01
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In re Application of:

S.D. AUGUSTINE ET AL

Serial No. 08/855,061

Filed: May 13, 1997

For: THERMAL BLANKET

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Group Art Unit: 3711

Examiner: M. Graham

Docket No.: AUGA01000012

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REPLY BRIEF

This is in response to the Examiner's Answer mailed May 22, 2001, Paper No. 39, in this application. This Reply Brief is being mailed on July 23, 2001, the first working day following July 22, 2001, which was a Sunday. Accordingly, this paper is timely.

Related Appeals and Interferences

The Examiner is correct in noting that Application No. 08/846,089 had been on appeal, with Appeal Brief submitted February 11, 2001. However, that application has been withdrawn from appeal and allowed by a Notice of Allowance mailed March 8, 2001.

There is, however, another application on appeal that is derived from an early ancestor of this application. Application No. 08/⁸31,603 has been set for Oral Hearing on August 14, 2001. The claimed subject matter of the '603 application concerns a drape, use of a drape, a foot drape, a non-inflatable drape, and an uninflatable drape, all formed by an extension of some portion of an inflatable blanket.

Response to the Argument in the Examiner's Answer

The Applicants continue to advance the arguments already made in their Brief on Appeal. The following responses are intended to supplement the Brief on Appeal with respect to certain specific, identified arguments or statements in the Examiner's Answer.

Claims 20, 22, and 34

Fundamentally, anticipation requires that each and every element as set forth in a claim be found, either expressly or inherently described, in a single prior art reference. Claims 20, 22, and 34 set forth an inflatable cover with a "base sheet" characterized as follows:

"a laminate base sheet having two ends and two edges defining a periphery of the cover;
the base sheet including an under layer of a fibrous material, and an upper surface;
a plurality of apertures opening through the base sheet ... "

The statement is made in the Examiner's answer that "the appellants argue that although each and every structural feature of the claimed device is disclosed by Roehr ... it cannot anticipate appellants' device because the reference does not use the same terminology in describing the device." It is not accurate to characterize the applicant's traversal of the rejections for anticipation as being based upon differences in terminology. In fact, the applicants have consistently argued throughout the course of this prosecution that certain elements, limitations and relationships that are positively recited in the claims are missing from Roehr.

In finding anticipation of these claims by inherency, the Examiner has taken a single passage of Roehr ("fabric lined with plastic foil") and invested it with all of the limitations and relationships of the three lines of Claim 20 that are quoted above. Thus, at page 5, lines 5-7, of the first paragraph of the Examiner's Answer, it is stated:

"Roehr's fabric layer *may be considered* the 'under layer' and Roehr's foil layer *may be considered* the upper surface. Roehr's layer 11 which comprises both of these layers is attached to the overlaying sheet 111." (italics added for emphasis)

In fact, these limitations are absent from Roehr. Roehr does not illustrate or describe any detail regarding the orientation of the layers 11, 111. In this regard, Roehr does not show or describe a "laminate base sheet" with the limitations and relationships recited in claim 20. Figs. 1

and 2 of Roehr do not show either of the layers 11, 111 in detail, and the description of those figures does not supply the missing description. Moore is offered to support the conclusion that Roehr includes "a laminate base sheet." The statement is made that Moore "shows a fabric lined with plastic foil, and refers to the structure as a laminate structure." It is respectfully submitted that this is not the case for reasons already stated in the Brief on Appeal. Further, Moore cannot be asserted for the general proposition that the illustration and description of "laminated thermoplastic film panels" (Moore at C. 2, l. 13) supply the missing subject matter in Roehr, for two reasons.

First, Moore disavows a structure in which a thermoplastic panel is secured to "a highly absorbent material, such as a soft paper of the quality used in facial tissue." Moore specifically excluded such a structure from the scope of his description for the following reason:

"... the fibers of such absorbent material will not adequately anchored to the laminated plastic film conduit ..." (Moore, C. 1, ll 14-18).

Moore, in fact, disclosed that an additional material had to be interposed between the highly absorbent material and the thermoplastic film panel to which it was secured. So, in at least one case, Moore describes a multilayer laminated plastic film conduit as being inadequate to his purposes. Second, Moore also identifies and distinguishes other disadvantageous lining structures. Such disadvantageous structures include pillow cases or slip covers that are secured to thermal pads by stitching. This is one possible way of lining fabric with foil. But one which Moore identifies as being undesirable. Moore also points out that a thermal pad material of "rubberized fabric" disposes a cloth lining "on the inside of the construction." See *Moore* at C. 1, l64-C 2. l5. Such a construction is also undesirable to Moore. Thus, the Moore reference, in teaching away from many laminate structure embodiments is therefore so limited and qualified in its description of laminate structures that it cannot be accorded a broad reading to supply the subject matter that is absent from Roehr's "fabric lined with foil."

Claims 20, 22, and 34 also recite an overlaying sheet attached to the upper surface of the base sheet "to form an inflatable structure", and a "non-inflatable portion" of the inflatable structure near "a head end" of the inflatable cover. These elements, limitations and relationships are absent from Roehr. The only offer of proof that the missing subject matter is inherent is the examiner's statement : "As any laymen will appreciate, when air is pumped into Roehr's device with sufficient pressure it will inflate." (Examiner's Answer, P.5, ll. 4,5 of the last paragraph.) The applicant has introduced evidence with the Wales patent that airflow devices incorporating plastic materials may have non-inflatable, self-supporting structures. The examiner therefore has the burden of proving

that "inflatability" is inherent in Roehr. Without clearly and concretely establishing this omitted subject matter, the other "non-inflatable" elements of the rejected claims cannot be established.

Claim 21

In respect of claim 21, the "center of the inflatable structure" recited in the claim has clear and unequivocal support in the specification. This subject matter is manifestly absent from Roehr. The statement that Roehr's center "includes the area to either side " of Roehr's center axis does not supply the omitted subject matter.

Obviousness Rejections

The remaining claims are subject to rejections for obviousness. None of these rejections sets forth the basis for a reasonable expectation that proposed modifications and combinations will be successful. Accordingly, all omit the second required element of *prima facie* obviousness. See MPEP 2142, 2143, and 2143.02. The applicants request that the Board instruct the examiner to rectify these omissions or withdraw the deficient rejections.

Claims 23, 28, and 31

In addition to the arguments already presented in traversal of this rejection, it is noted that Roehr does not disclose that the fabric lining is necessarily coextensive with the plastic foil. Accordingly, it would be possible to weld two fabric lined plastic sheets together by stopping the extent of the fabric short of the periphery of plastic. Such a construction might be chosen, for example to enhance or adjust the thermal or air flow characteristics of Roehr's device. Furthermore, with the careful choice of fabric material, a plastic to fabric weld can be achieved, so it is equally likely that Roehr's layers could be welded fabric to fabric, and fabric to plastic, as it is that they would be welded plastic to plastic.

Moore specifically shows a heavy duty fabric composed of very long fibers that have structural and wetting characteristics suitable to the intended use: an absorptive patient contact panel in a device that derives heat from circulated water and conducts it to a patient through a wetted layer of fibers. This is a device that is substantially different in structure, operation, and material from the claimed subject matter. It is directed to the problems of heavy duty usage and wetting, not to the delivery of thermally conditioned air.

The Examiner asserts that Moore teaches the interchangeability of paper and fabric. In fact Moore teaches away from the use of any highly absorbent materials such as paper in laminated warming structures because (according to Moore) they can not be "adequately anchored to the laminated plastic film conduit ... ". (Moore, C. 1, ll. 13-17). Moore directed attention to much heavier duty materials composed of very long fibers because of the intended heavy duty use of his treatment pad. (See Moore at C. 2, ll. 17-34). In fact, as the applicant found with the painter's drop cloth material described in the specification of this application, other lighter duty fibrous materials such as paper are very adequate for use as an underlayer in the laminate base sheet of the claimed inflatable device.

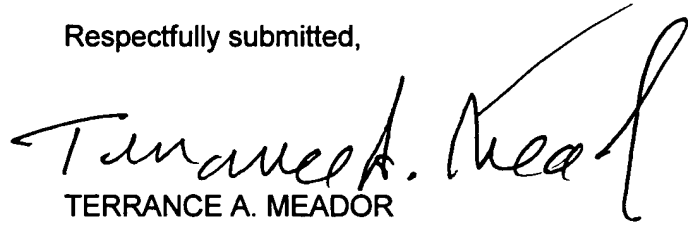
Claims 32 and 33

"Comfort" is the examiner's notion of motivation. It has been consistently and timely traversed. However, the examiner has not introduced evidence to support such a motivation in the file of this application. Accordingly, for this reason and for other reasons set forth in the Brief on Appeal, the examiner has not met the required burden of proof in this rejection. See MPEP 2144.03.

Claims 35 and 36

The examiner has introduced a new motivation for combining Hardy with Roehr: the "inherent advantage" of better coverage of the body. See MPEP 1208.01. The applicants have not had a fair opportunity to consider this ground of rejection. Accordingly, the Board is respectfully requested to direct the examiner either to reopen examination to afford the applicants the opportunity to respond to this ground of rejection or to withdraw it and allow these claims.

Respectfully submitted,


TERRANCE A. MEADOR
Registration No. 30,298

Date: 23 July 2001

GRAY CARY WARE & FREIDENRICH
4365 Executive Drive, Suite 1600
San Diego, CA 92121-2189

Telephone: (858) 638-6747 Fax: (858) 677-1465